

**MINUTES OF THE
PUBLIC UTILITIES AND TECHNOLOGY INTERIM COMMITTEE**

Wednesday, July 12, 2000 – 2:00 p.m. – Room 223 State Capitol

Members Present:

Sen. Lorin V. Jones, Co-Chair
Rep. Sheryl L. Allen, Co-Chair
Sen. Leonard M. Blackham
Sen. Mike Dmitrich
Sen. Joseph L. Hull
Sen. Howard C. Nielson
Rep. Ralph Becker
Rep. Chad E. Bennion
Rep. Melvin R. Brown
Rep. David N. Cox
Rep. Gary F. Cox
Rep. Brent H. Goodfellow
Rep. David M. Jones
Rep. Gordon E. Snow
Rep. Martin R. Stephens
Rep. John E. Swallow
Rep. David Ure

Members Absent:

Rep. Kevin S. Garn
Rep. Tom Hatch

Members Excused:

Rep. Blake D. Chard

Staff Present:

Mr. Richard North,
Research Analyst
Ms. Tani Pack Downing,
Associate General Counsel
Ms. Junie G. Anderson,
Legislative Secretary

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Call to Order - Chair Allen called the meeting to order at 2:18 p.m.

MOTION: Rep. Bennion moved to approve the minutes of the June 14, 2000 meeting as written and the June 15, 2000 meeting as amended. The motion passed unanimously.

Mr. L. J. Godfrey, informed the committee of a product/information demonstration today on Capitol Hill displaying telephone service over cable and highspeed Internet service.

2. HB 320 Interim Review - Regulatory & Consumer Advocate Organizational Structure/Location Continued - Mr. North briefed the committee and members of the audience on the structure/location issue as follows:

Where Is Utah's Committee Of Consumer Services (CCS) Organizationally Located? (Existing Utah Code)

Where Does HB 320 Organizationally Locate Utah's CCS

What Are The National Trends Regarding Consumer Advocates: Independent or Dependent? (50 State Survey)

Mr. Jerry Oldroyd, representing transitionally regulated competitors in telecommunications, said the CCS should be a part of Division of Public Utilities (DPU). He addressed the issue of providing competition to the customer. He discussed the procedure that competitors follow at the Public Service Commission (PSC) and how it can enhance or detract from the ability of companies to compete. Mr. Oldroyd said there must be consistency in public policy. He agreed that the DPU should be part of the PSC to prevent situations where the DPU may make policy positions and/or decisions that may be different than the PSC. He also said with the balancing considerations in HB 320 "Public Utility Amendments," the situation becomes even more complicated.

Mr. Oldroyd also said there is a near-monopoly presence in the telephone local exchange market and there needs to be competitive choices. He recommended the CCS provide a yearly report to the committee showing positions it has taken on certain issues.

Rep. Bennion said it is important to have a clear definition of meaning of "independence in the statute regarding the CCS."

Mr. Kim Christy, Utah Farm Bureau, distributed a handout titled "Table A15. Average Revenue per Kilowatt Hour by Sector and State, 1998," and discussed the comparisons by state as outlined. A comparison of six states was included titled "Utah Power & Light Company Irrigation Average Cents / kWh by State for 12 Months Ended December 31, 1999."

He discussed the Farm Bureau's historical association with the CCS. He said the CCS's influence has had a major impact on PSC decisions over the years and explained how important the presence of the CCS has been to agriculture.

Mr. Christy asked committee members to consider pulling the CCS out of the Office of the Public Advocate (OPA) and leaving it under the umbrella of the Department of Commerce (DOC) as a stand-alone entity and to consider merging the DPU into the PSC.

He explained the original endorsement of HB 320 by the Farm Bureau to accept a compromise and the reason why the Farm Bureau changed its decision. He said, in part, the decision was made because there would be a year-delayed effective date to examine the pros and cons of the bill. He stated it would be problematic to have one entity with both an advocacy requirement and a balancing requirement at the same time.

Mr. Christy also addressed concerns for the shortage of power, future demands for power, and rate increases.

Mr. Steve Mecham, PSC, suggested combining the DPU with the PSC and spoke in support of independence from the PSC for small customer representation.

Mr. Ric Campbell, DPU, distributed a handout titled "Analysis of Utility Regulatory Structures." He discussed the pros and cons of three organizational options regarding the DPU, PSC, and CCS.

MOTION: Rep. Becker moved to repeal Sections 54-10a-8 through 54-10a-8 in HB 320 regarding the OPA and reinstate the CCS as currently authorized in Section 54-10-1 through 54-10-7.

SUBSTITUTE MOTION: Rep. Ure moved to go the next item on the agenda. The motion passed with Rep. Becker, Rep. Gary Cox, and Rep. Goodfellow voting in opposition to the motion. Sen. Hull and Rep. Jones were absent for the vote.

Chair Allen said the chairs would prefer to have a majority-vote committee bill prior to the end of the November meeting. She noted that HB 320 has brought forth the most in-depth investigation into public utilities regulation that Utah has had in several decades. She also stressed the importance of healthy utility stock.

3. Settlement/Structures Discussion and Concept Agreement - Ms. Downing distributed legal briefs on due process issues raised in Settlement Conference provisions titled "Constitutionality of House Bill 320" by Jerry Oldroyd, and one from Gary Thorup titled "Section 54-7-11.5 (H.B. 320)(2000)." She discussed the legal briefs with committee members.

4. HB 320 Interim Review: "Just & Reasonable" and Balancing Factors - Ms. Downing distributed a packet of information that included "Table 1. Balancing of Interest Factors," "Letter from Gary Dodge, Parr Waddoups Brown Gee & Loveless, RE: HB 320 'Balancing Test,'" and "Memorandum from Ian Douglas, Law Clerk, Office of Legislative Research and General Counsel, RE: 'Just and Reasonable' Standard and Balancing Factors." She briefed committee members on the contents.

Mr. Chuck Greenhawt, Questar, discussed Supreme Court caselaw and the constitutional requirements that public service commissions must observe when setting rates. He said HB 320 consolidates public utility regulatory process in one place in the Utah Code. A letter to Ms. Downing from Mr. Greenhawt and a letter to Mr. Greenhawt from Branko Terzic, Deloitte & Touche, including Questar Survey Results on other states' organizational structures for utility regulation, were distributed to committee members.

Mr. Doug Larsen, PacifiCorp, spoke regarding the balancing issue. He said HB 320 reduces the voice of consumers in the rate-making process and the CCS's ability to stand up for consumers. He noted that service quality, reliability, and price should be balanced.

Sen. Dmitrich said the statute must be changed to consider the economic ramifications for all utility users.

Mr. Oldroyd suggested the telecommunications industry have a separate section of the code excluding it from the balancing factors. He said in order to avoid litigation there must be a balancing test or procedures for competitive industries because competition is the regulator that sets prices and quality of service.

Ms. Claire Geddes said that “just and reasonable” rates and balancing cannot be done without having all components in the evidence and that the MCI case should not be overturned.

Ms. Betsy Wolf, Salt Lake Communication Action Program, addressed the issues of the balancing provisions within the OPA and the balancing of the PSC and its duties. She expressed concern about dual OPA functions in HB 320. She said it is essential that consumers have an advocate that represents them while taking into consideration long-term ramifications on the company. She also was concerned about the change in the initial section of HB 320 and Section 54-1-1 because the language tips the balance in favor of the monopoly provider or the incumbent utility.

Mr. Jeff Fox, Utah Consumers Network, Crossroads Urban Center, expressed concern over the balancing test.

Mr. Gary Dodge, representing large industrial users, addressed the issue of balancing tests and referred to the letter he had written that was part of the packet distributed by Ms. Downing. He recommended the “just and reasonable” clause be left as it is in current statute and to make sure that any changes provide a fair balance to both the utility and the consumer.

Mr. Scott Gutting, also representing large industrial users, spoke of impending electrical deregulation and its impact on customers. He and Mr. Dodge said they supported HB 276 “Utility Regulation Amendments” as well during the last legislative general session.

Mr. Mecham suggested the standard of “just and reasonable” be made clear as to whether the language was meant to change the way the PSC currently makes its determinations. Otherwise, he will interpret that it is just codifying current caselaw. He noted that the authorized rate of return for PacifiCorp is eleven percent. He commented on the test year and said that a future test year is the Supreme Court standard.

A document from Mr. Harold A. Ranquist was distributed to committee members and a document titled “Administrative Procedures for Proactive Regulation” from Mr. Robert E. Burns, Esq., The National Regulatory Research Institute, was also distributed.

5. Adjournment -

MOTION: Sen. Jones moved to adjourn the meeting at 4:56 p.m. The motion passed unanimously with Sen. Blackham, Sen. Hull, Sen. Nielson, Rep. Brown, Rep. D. Cox, Rep. Jones, and Rep. Stephens absent for the vote.